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AMERICAN FAMILY MUTUAL INSURANCE  
10 COMPANY

11 UNITED STATES DISTRICT COURT  
12 DISTRICT OF NEVADA  
13

14 LENARD E. SCHWARTZER, in his capacity as  
Bankruptcy Trustee for the Bankruptcy Estate of  
15 Alisson Santos,

16 Plaintiff,

17 vs.

18 AMERICAN FAMILY MUTUAL INSURANCE  
COMPANY, a corporation; and DOES I through  
19 V; and, ROE CORPORATIONS VI through X,  
inclusive,

20 Defendants.

Case No. 2:15-cv-01115-APG-PAL

AGREED PROTECTIVE ORDER

21 Upon stipulation of the parties, it is hereby ORDERED that all documents and other  
22 materials produced by Defendant AMERICAN FAMILY MUTUAL INSURANCE COMPANY  
23 (hereinafter sometimes referred to as "AMFAM") voluntarily or by Order of the Court, have been  
24 and will be produced under the following conditions.

25 I.

26 A. The parties recognize that discovery in this matter may call for the production of  
27 materials containing confidential and proprietary business, technical and other commercially  
28

1 sensitive information and that the producing party has a protected proprietary and property interest  
2 in those materials.

3 B. If AMFAM has a good faith factual and legal basis for asserting a privilege or  
4 exemption from public disclosure, AMFAM may designate as "CONFIDENTIAL" the portion of  
5 any produced material it considers subject to its claim of privilege or exemption in accordance with  
6 Section I.E., below, and relying upon the terms of this Order in producing said information. Such  
7 "CONFIDENTIAL" designation shall make the designated portions of those produced materials  
8 and all copies, prints, summaries, translations, or other reproductions of such material subject to the  
9 Agreed Protective Order. This Agreed Protective Order shall also apply to the specific pages and  
10 lines from oral depositions designated as "CONFIDENTIAL" by the producing party in accordance  
11 with Section I.E., below.

12 C. When used in this Agreed Protective Order, the word "CONFIDENTIAL" means  
13 designated commercially sensitive business information, and other confidential and/or proprietary  
14 information of AMFAM or its affiliates and parent companies.

15 D. When used in this Agreed Protective Order, the term "CONFIDENTIAL  
16 MATERIAL" means all designated written materials, computer documents, claims histories, claims  
17 files, adjustment data, videotapes, Answers to Interrogatories, Responses to Requests for  
18 Production of Documents, deposition transcripts, documents produced by the producing party to  
19 any governmental agency or body or any time deemed by a governmental agency to be confidential  
20 under Federal or State law which discloses "CONFIDENTIAL" information. Nothing in the  
21 Agreed Protective Order, however, shall be interpreted to require the production of any trade secret  
22 information as defined in Nevada Revised Statute 600A.010 et. al or otherwise.

23 E. In order to designate a portion of any document or other printed material as  
24 "CONFIDENTIAL", AMFAM shall mark the designated pages of the material with the word  
25 "CONFIDENTIAL" in a manner that does not cover, obscure, or impair the legibility of any  
26 information contained within the material, but which makes it difficult to remove the designation.  
27 In order to designate a computer database, disc, compact disc, drive, or other electronically  
28 recorded material as "CONFIDENTIAL", the producing party shall make the case or envelope

1 containing the material with the word "CONFIDENTIAL". Documents printed from such  
2 electronic media shall be marked the same as documents originally produced on paper.

3 F. In the case of a deposition or oral examination, counsel for AMFAM may, during  
4 the deposition, designate on the record that testimony involving "CONFIDENTIAL MATERIAL"  
5 be held "CONFIDENTIAL" and the entire deposition transcript will be treated as  
6 "CONFIDENTIAL" until counsel for AMFAM receives a transcript of the deposition and for 30  
7 days thereafter. In the event that AMFAM's counsel, during the deposition, does not designate on  
8 the record that testimony involving "CONFIDENTIAL MATERIAL" be held as  
9 "CONFIDENTIAL", AFMAM does not waive its right to designate the deposition testimony as  
10 "CONFIDENTIAL" upon receipt of the deposition transcript. After receipt of the deposition  
11 transcript, the producing party shall identify by page and line the portion of the material that the  
12 producing party intends to designate as "CONFIDENTIAL" in a written letter served to all counsel  
13 of record within 30 days after receiving the written deposition transcript from the court reporter.  
14 Only the portions of the deposition transcript designated by the producing party during this time  
15 period shall remain "CONFIDENTIAL". The parties stipulate that the court reporter or  
16 videographer for any such depositions will be given a copy of this Agreed Protective Order, will  
17 execute an acknowledgement thereof, and shall not disclose to anyone (other than the COVERED  
18 PERSONS as defined in Section I.G below) any deposition testimony or exhibits in this lawsuit.

19 G. When used in this Agreed Protective Order, the term "COVERED PERSONS"  
20 includes only the following: (1) the Court and all court personnel; (2) the named parties in this  
21 litigation; (3) retained counsel for all of the parties in this litigation, including members of  
22 counsel's legal or support staff (e.g. in-house investigators, secretaries, legal assistants, paralegals  
23 and law clerks), to the extent reasonably necessary for such persons to render assistance in this  
24 litigation; (4) experts retained or consulted by counsel for any party to assist in the preparation,  
25 prosecution, or evaluation of this litigation; and (5) the Court, the Court's staff, witnesses, and the  
26 jury in this case.

## 27 II.

28 Absent a further Order of the Court, those documents marked as "CONFIDENTIAL"

1 MATERIAL” as described in Sections I.C. and I.D. shall not be used for any purpose other than the  
 2 prosecution or defense of this captioned action, and shall not be shown, disseminated or disclosed  
 3 in any manner to anyone other than COVERED PERSONS as defined in Section I.G. without the  
 4 prior written agreement of the producing party or Order of the Court after due notice to the  
 5 producing party.

### 6 III.

7 Before showing or divulging any “CONFIDENTIAL MATERIAL” or “CONFIDENTIAL  
 8 INFORMATION” to any COVERED PERSON other than the Court and court personnel, counsel  
 9 shall first obtain from each person a signed “WRITTEN ASSURANCE” in the form attached  
 10 hereto as **Exhibit “A”**. Counsel shall maintain a list of all recipients of “CONFIDENTIAL  
 11 MATERIAL” to whom this paragraph applies and the original of every “WRITTEN  
 12 ASSURANCE” required pursuant to this paragraph. At the conclusion of the litigation, the parties  
 13 shall forward to counsel for the producing party each and every signed “WRITTEN  
 14 ASSURANCE” and a list of all recipients of “CONFIDENTIAL MATERIALS”; however, with  
 15 regard to consultant(s) not identified as expert(s) in this matter, counsel need only produce a copy  
 16 of the “WRITTEN ASSURANCE” redacted to remove any reference to the identity of the  
 17 consultant(s).

### 18 IV.

19 A. ~~If any “CONFIDENTIAL MATERIAL” is filed with this Court, including any~~  
 20 ~~pleading incorporating “CONFIDENTIAL MATERIAL”, the portion of such filing containing~~  
 21 ~~“CONFIDENTIAL MATERIAL” shall be filed in a sealed envelope and the following legend shall~~  
 22 ~~prominently appear:~~

23 LENARD E. SCHWARTZER, et. al., v. AMERICAN FAMILY  
 24 MUTUAL INSURANCE, Case No. 2:15-DV-01115-APG-PAL-  
 25 CONFIDENTIAL-This envelope contains CONFIDENTIAL documents  
 or other material filed by American Family. It shall not be opened nor the  
 contents thereof displayed or revealed except by the Order of this Court.

26 B. “CONFIDENTIAL MATERIAL” may be introduced into evidence, if otherwise  
 27 admissible, provided that it may only be done so during a hearing or trial when counsel for  
 28

Not  
 Approved.  
 The parties  
 must comply  
 with LR 10-5.

1 AMFAM is present, and such to AMFAM's right to seek in camera treatment of such documents or  
 2 materials. Further, the Court may take such steps as it deems reasonably necessary to preserve the  
 3 confidentiality of the documents or information.

4 C. ~~All writings submitted to or filed with the Court in connection with any pre-trial~~  
 5 ~~proceeding that contains, set forth, summarizes, or otherwise discloses "CONFIDENTIAL~~  
 6 ~~MATERIAL" shall be under seal and such documents shall not be publicly available, except by~~  
 7 ~~further Order of this Court.~~

8 D. If any party or person who has obtained "CONFIDENTIAL MATERIAL" under the  
 9 terms of this Agreed Protective Order receives a subpoena or other legal process commanding the  
 10 production of any such "CONFIDENTIAL MATERIAL" (the "Subpoena"), such party or person  
 11 shall promptly notify counsel for AMFAM of the service of the Subpoena and shall promptly  
 12 transmit a copy of the Subpoena to counsel for AMFAM. AMFAM will have ten days from the  
 13 date of confirmed receipt of the Subpoena by its counsel to intervene to request that the Subpoena  
 14 be quashed. If a Motion to Quash is filed, the party or person receiving the Subpoena shall not  
 15 produce any "CONFIDENTIAL MATERIAL" in response to the Subpoena without either the prior  
 16 written consent of counsel for AMFAM, or an Order of a Court of competent jurisdiction.

#### 17 V.

18 Certain parties can produce large volumes of materials in discovery in this matter, including  
 19 large collections of materials in the form of paper or electronic format repositories, increasing the  
 20 likelihood that information protected from discovery by certain privileges or immunities, or  
 21 "CONFIDENTIAL MATERIAL" not marked as such, may be produced inadvertently. Therefore,  
 22 the following provisions shall apply to the production of information in this case.

23 A. Inadvertent production of documents subject to work product immunity, the  
 24 attorney-client privilege, the trade secret and proprietary business information privilege, or other  
 25 legal privilege, rule or doctrine protecting information from discovery shall not constitute a waiver  
 26 of the immunity or privilege either for the inadvertently produced document or its subject matter  
 27 (so-called "subject matter waiver"), produced that the producing party shall notify the receiving  
 28 party in writing of such inadvertent production promptly upon becoming aware of it.

Not  
 approved.  
 The parties  
 must comply  
 with LR 10-5.



1           B.     If reasonably prompt notification is made, such inadvertently produced documents  
2 and all copies thereof, as well as all notes or other work product reflecting the contents of such  
3 materials, shall be returned to the producing party or destroyed, and such returned material shall be  
4 deleted from any litigation-support or database. No use shall be made of such documents during  
5 discovery or trial nor shall they be disclosed to anyone who was not given access to them before  
6 the request to return and destroy them.

7           C.     If any party contends that the notification of inadvertent production was not  
8 “reasonably prompt”, it shall notify the producing party in writing, and will make no further use of  
9 such documentation pending a resolution of its status by the Court. It shall be the burden of the  
10 producing party to move for a Protective Order regarding the inadvertent production, and to  
11 demonstrate both that the production was inadvertent, that reasonable diligence was exercised to  
12 identify the inadvertently produced information, and that notification was made with reasonable  
13 promptness after discovery the inadvertent production.

14           D.     The party returning or destroying such documents may move the Court for an Order  
15 compelling production of the material, but such Motion shall not assert the fact or circumstances of  
16 the inadvertent production as a ground for entering such an Order.

17           E.     Inadvertent failure to designate produced materials as “CONFIDENTIAL  
18 MATERIAL”, pursuant to the terms of Section I above shall not constitute a waiver of the right to  
19 designate such materials “CONFIDENTIAL”, provided that the producing party shall notify the  
20 receiving party of such inadvertent failure to designate promptly upon becoming aware of it.

21           F.     If reasonable notification is made of such failure to designate, such inadvertently  
22 non-designated documents and all copies thereof, shall be returned to the producing party or  
23 destroyed and such material shall be deleted from any litigation-support or database. No use shall  
24 be made of such non-designated documents during discovery or at trial nor shall they be disclosed  
25 to anyone who was not given access to them before the request to return or destroy.

26           G.     Any inadvertently produced document or documents provided to the Court pursuant  
27 to Section V shall not be considered “court records” as defined in Nevada Revised Statutes Section  
28 231.001 et. seq. and similar statutes.

## VI.

Within 90 days after the final disposition of this lawsuit, by settlement, trial or appeal, counsel for the parties shall deliver to counsel for the producing party all "CONFIDENTIAL MATERIAL" including any copies (except those determined by the Court or agreed by the parties not to be "CONFIDENTIAL") which have been disseminated to any "COVERED PERSONS", except that parties and their counsel may retain pleadings, memoranda, declarations, affidavits, non-"CONFIDENTIAL" portions of deposition transcripts, notes, summaries, expert reports, trial and hearing transcripts, or other attorney work product which refers to or describes "CONFIDENTIAL MATERIAL". Deposition transcripts need not be returned if all "CONFIDENTIAL" portions have been destroyed or obliterated.

## VII.

In the event that counsel for any party, in good faith, disputes the designation of any document as "CONFIDENTIAL", he or she shall notify counsel for AMFAM in writing within thirty days of the receipt of "CONFIDENTIAL MATERIAL" specifying the material that is challenged. AMFAM would then bear the responsibility of seasonably applying to the Court for a determination that the specified "CONFIDENTIAL MATERIAL" is protected pursuant to this Agreed Protective Order. Until a final determination by the Court, any disputed document shall be treated as "CONFIDENTIAL MATERIAL" pursuant to this Agreed Protective Order. Nothing in the Agreed Protective Order shall be construed to alter or shift the burdens of proof and persuasion as they apply to the assertion of privileges or exemptions from public disclosure.

## VIII.

A. This Agreed Protective Order shall not preclude the parties from exercising any rights or raising any objections otherwise available to them under the rules of discovery or evidence. Nothing contained in this Agreed Protective Order shall, in any manner, change, alter or modify any of the rights of the producing party or any other party under any other Orders issued by any other courts concerning the protection of "CONFIDENTIAL MATERIALS" and "CONFIDENTIAL" information. Nothing in this Agreed Protective Order shall limit the rights of the parties to apply for further Protective Orders or for modification of the terms of this Agreed

1 Protective Order.

2 B. This Protective Order may not be waived, modified, abandoned, or terminated, in  
3 whole or in part, except by an instrument in writing signed by the parties, or by Order of the issuing  
4 Court. If any provision of this Protective Order shall be held invalid for any reason whatsoever, the  
5 remaining provisions shall not be affected thereby.

6 C. This Protective Order shall be binding upon the parties hereto, upon their attorneys,  
7 and upon the parties' and their attorney's successors, executors, personal representatives,  
8 administrators, heirs, legal representatives, assigns, subsidiaries, divisions, employees, agents,  
9 independent contractors, or other persons or organizations, over which they have control.

10 IX.

11 At the conclusion of this lawsuit, the Court shall retain jurisdiction of this lawsuit for the  
12 enforcement of this Agreed Protective Order.

13 This Protective Order is agreed to by and between the parties.

14 DATED this 3 day of ~~November~~, 2015

DATED this 21 day of ~~November~~, 2015

15 VANNAH & VANNAH

BREMER WHYTE BROWN & O'MEARA

16  
17 By: 

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23 1160 N. Town Center Dr., #250  
24 Las Vegas, Nevada 89144  
25 Attorneys for Defendant

26 IT IS SO ORDERED.

27 Dated: December 7, 2015

28   
UNITED STATES MAGISTRATE JUDGE